



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of: )  
)  
) ISCR Case No. 17-00270  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Ross Hyams, Esq., Department Counsel  
For Applicant: *Pro se*

1/31/2017  
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**Decision**  
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RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is granted.

**Statement of the Case**

On February 15, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006. On June 8, 2017, new AG were implemented and are effective for decisions issued after that date.<sup>1</sup>

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<sup>1</sup> I considered the previous AG, effective September 1, 2006, as well as the new AG, effective June 8, 2017. My decision would be the same if the case was considered under the previous AG.

Applicant answered the SOR on March 1, 2017, and requested a hearing before an administrative judge. The case was assigned to me on June 9, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 19, 2017. I convened the hearing as scheduled on November 15, 2017. The Government offered exhibits (GE) 1 through 4. Applicant testified and offered Applicant Exhibits (AE) A through C. There were no objections to any exhibits offered and all were admitted into evidence.<sup>2</sup> DOHA received the hearing transcript on November 22, 2017.

### **Findings of Fact**

Applicant admitted the allegations in the SOR ¶ 1.a and denied the remaining allegations. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 45 years old. He attended college, but did not graduate. He earned technical and professional certificates. He married in 1999 and has no children. He has been employed by a federal contractor since 2009. His wife is employed.<sup>3</sup>

In approximately 2003, Applicant met a young man who was 19-years-old at the time. His parents had forced him to move out of their house and he was staying with different people. He was going through a difficult time. Over the course of a year, Applicant got to know the man. In about 2004, Applicant and his wife agreed to let the man live with them as long as he got a job. A friend of Applicant's, Mr. R, owned an electrical store, and hired the man as an apprentice. During the time the man was living with Applicant and his wife, the man met a woman over the Internet. The man lived with Applicant and his wife from 2004 until the spring of 2005, when he disappeared. Applicant testified that they thought they were doing the right thing by helping the man during a difficult time.<sup>4</sup>

Approximately a month after the man left, Applicant began receiving bills from creditors with whom he did not have accounts. When he received a \$2,500 phone bill, he contacted the creditor and unsuccessfully protested the bill. He subsequently took money out of his savings to pay it. He started to contact the creditors that were sending him bills. He learned that accounts had been opened in his name months earlier, and the man had been receiving the bills at Applicant's residence, but had intercepted them from the mail so Applicant did not know about the accounts. The man did not pay the accounts. Applicant began making minimum payments on the accounts even though he did not open them because he did not know what to do. He attempted to explain the situation and negotiate with the creditors. Applicant later learned that the man was purchasing items using Applicant's credit and then selling the items for cash.

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<sup>2</sup> Hearing Exhibit I is the Government's discovery letter.

<sup>3</sup> Tr. 20-23.

<sup>4</sup> Tr. 23-28.

Applicant filed a police report in 2005 when he became aware of the problem. The police assured him that the man would be arrested if he returned to the area, but it appeared the man was now somewhere in a different state.<sup>5</sup>

Applicant attempted to dispute the accounts with the creditors, but he had difficulty with them being responsive to his problem. After making payments on accounts that he did not authorize, he became frustrated and decided he was not going to pay them any longer, so he stopped. He ignored the accounts for many years until he received the SOR and realized his security clearance was in jeopardy.<sup>6</sup>

Shortly after receiving the SOR, Applicant contacted a friend of his mother who is an attorney. The attorney contacted the numerous creditors requesting they produce Applicant's signature authorizing the accounts or remove them from Applicant's credit report. He has successfully disputed and removed the unauthorized accounts from Applicant's credit report. He does not have any past due or delinquent debts.<sup>7</sup>

Applicant admitted the debt in SOR ¶ 1.a belonged to him. It is a medical debt (\$133) that through an oversight was not paid timely. It has been paid. The debts in SOR 1.b through 1.m are the fraudulent accounts Applicant has had removed from his credit report.<sup>8</sup>

Character witnesses testified on Applicant's behalf and described him as a morally and fiscally responsible person. Mr. R testified and confirmed that the man who stole from Applicant also stole from him. After he hired the man as an apprentice, the man needed a vehicle to get to and from work. Mr. R sold him one for \$2,500. The man paid him \$1,100 and the balance was to be paid in the future while the man worked for him. Within days of getting of the vehicle, the man left without paying him the balance. Mr. R retains the title.<sup>9</sup>

Applicant apologized for not being more responsible in handling the financial matter. He attributed it to being overwhelmed and frustrated with debts that did not belong to him. He and his wife live within their means. The debts alleged in the SOR have been removed from Applicant's most recent credit report.<sup>10</sup>

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<sup>5</sup> Tr. 33.

<sup>6</sup> Tr. 27-28.

<sup>7</sup> Tr. 28-33.

<sup>8</sup> Tr. 28-31; AE A, B.

<sup>9</sup> Tr. 37-44.

<sup>10</sup> AE B.

## Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable security decision."

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## Analysis

### Guideline F: Financial Considerations

The security concern relating to the guideline for financial considerations is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability to satisfy debts; and
- (b) unwillingness to satisfy debts regardless of the ability to do so.

Applicant was the victim of fraud and identity theft. Although the alleged delinquent debts were in his name, they were not incurred by him. His credible testimony and corroborating evidence prove that all SOR debts, except SOR ¶ 1.a, are not his responsibility. There is insufficient evidence to support the application of the above disqualifying conditions.

I also conclude that mitigating conditions AG ¶¶ 20(b) and 20 (e) are applicable in that Applicant has acted responsibly by consulting an attorney, disputing the debts, and having them removed from his credit report.<sup>11</sup>

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<sup>11</sup> AG ¶ 20(b) states: the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances.

AG ¶ 20(e) states: the individual has a reasonable basis to dispute the legitimacy of the past-due debt, which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

## **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant is 45 years old. He was the victim of fraud and identity theft. He has resolved the fraudulent accounts. He lives within his means and his finances are not a security concern. The record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under Guideline F, financial considerations.

## **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a-1.m:	For Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

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Carol G. Ricciardello  
Administrative Judge